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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Policy and Rules Concerning the )  
Interstate, Interexchange )  
Marketplace )

Implementation of Section 254(g) )  
of the Communications Act of )  
1934, as amended )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

CC Docket No. 96-61

AT&T CORP.'S PETITION FOR RECONSIDERATION

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## SUMMARY

Recent actions of regional interexchange carriers affiliated with incumbent local exchange carriers demonstrate the market need for the Commission to reconsider its decision not to forbear from the general rate averaging requirement in situations where national carriers compete with regional carriers. Unlike national carriers, regional competitors do not have to consider rate averaging requirements in establishing their rates. Rather, they can set rates that are based solely upon the market needs of their specific service areas, and those rates need only reflect a single LEC's access charges -- often the charges of their own affiliates. Granting national carriers rate flexibility to offer lower (but not higher) rates in such cases meets the forbearance requirements of Section 10 and will benefit both competition and consumers.

The Commission should also reconsider its decision to restrict the permissible period for geographically specific promotions to 90 days or less. This limitation is not mandated by the legislative history of Section 254(g), and it is more restrictive than the Commission's prior procompetitive policies which have allowed long distance competition to flourish throughout the country. Accordingly, the Commission should restore its prior 24 month limit for geographically specific promotions.

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AT&T CORP.'S PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, AT&T Corp. ("AT&T") hereby petitions the Commission to reconsider two aspects of its August 7, 1996 Report and Order in this proceeding ("Order") regarding geographic rate averaging. First, recent actions of certain regional interexchange carriers -- particularly those affiliated with incumbent local exchange carriers -- demonstrate that the Commission should reconsider its decision not to forbear from the general rate averaging rule in situations where nationwide carriers compete with regional carriers. Second, the Commission should reconsider its decision to restrict geographically specific promotions to periods of 90 days or less, and permit consumers to enjoy the benefits of attractive pricing options for more meaningful periods, as was previously allowed under the Commission's policies and rulings.

I. The Commission Should Adopt a Forbearance Rule that Provides Adequate Flexibility for Nationwide Carriers to Compete with Regional Carriers.

In the Order (§ 38), the Commission declined to adopt an exception to its general rate averaging rule that would permit national carriers to offer geographically specific rates to compete with the offers of large regional carriers. The Commission (§ 39) found that the national carriers proposing such an exception based their claims "entirely on generalized assertions of the alleged need" for such relief. AT&T submits that the need for the exception -- and the indisputable consumer benefits it would yield -- are so obvious that even "generalized assertions" more than justify relief on reconsideration. Moreover, recently-available facts concerning the activities of the interexchange affiliates of incumbent local exchange carriers now confirm that national carriers need greater flexibility to file geographically specific rates and optional calling plans, and that consumers will reap immediate benefits if the Commission grants the relief AT&T requests here.

The clearest example of the need for geographically-specific rates is the rapidly emerging competition from SNET in Connecticut. Since comments were filed in this proceeding, SNET has continued its massive -- and extremely successful -- marketing campaign to customers

in its home state. A recently published report states that SNET has now captured 25% of the customers for long distance in its operating area, which market analysts describe as "the ultimate high margin, low capital intensity vertical service" for local exchange carriers.<sup>1</sup>

SNET's in-region marketing focuses on several key attributes which cannot be duplicated by its national competitors, including the fact that SNET is the only entity which can practicably offer a complete package of local, intraLATA toll, interLATA and cellular services, all of which can be provided on a single bill.<sup>2</sup> SNET also seeks in its advertising to position itself as the "home town" local carrier with the closest ties to customers in its area. This campaign has been so successful that over 260,000 residential customers "outPIC'd" from AT&T to SNET in Connecticut between March and July of this year.

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<sup>1</sup> Merrill Lynch, "Telecom Services -- RBOCs & GTE," August 9, 1996, p. 1. See also id. ("In our view, LD enables the RBOCs/GTE to gain enough to offset the inevitable pain of losing local market share").

<sup>2</sup> Although AT&T is now certified to be a local service provider in Connecticut, it cannot reasonably offer local services. AT&T has not yet been able successfully to negotiate an interconnection agreement with SNET, and SNET's "wholesale" residential rates are more than 50% higher than the rates it charges for those same services when they are sold directly to retail customers.

Notwithstanding these handicaps and SNET's success, AT&T has attempted to compete with SNET by launching its own marketing campaign to win back customers who had changed to SNET and to retain existing customers. Because it could not match the breadth of SNET's "all distance" offers, which include both local and intraLATA toll services, AT&T offered several different promotional discounts to customers in the SNET area. Because AT&T was generally competing with permanent SNET rates and rate structures, however, it was not sufficient to offer these customers short-term promotions. Accordingly, AT&T filed and offered promotional discounts on interstate calls that ran for periods of six to twelve months. At the time AT&T filed these promotions, they were fully consistent with existing Commission policies and IXC industry practices. Nevertheless, SNET responded to AT&T's efforts by filing a complaint with the Commission alleging that AT&T's promotions violated the rate averaging requirements.<sup>3</sup> Thus,

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<sup>3</sup> SNET America, Inc. v. American Telephone and Telegraph Company, E-96-34, filed July, 8, 1996 ("Complaint"). AT&T's Answer (filed September 4, 1996) demonstrates that the Complaint is meritless because the subject promotions are consistent with long-standing, articulated Commission policies and rulings that permit similar promotions to take effect and that acknowledge the public benefits of such offerings. In addition, even though SNET had previously sought an exemption from the requirements of Section 251 of the Telecommunications Act of 1996 on the ground that it is a "rural" carrier, SNET argued in its

SNET has attempted to use the rate averaging rules as a shield against more effective competition in its service area. This is directly inconsistent with the intent of the 1996 Act to foster competition in all telecommunications markets.<sup>4</sup>

Alltel's activities in Georgia provide another example of the ability of incumbent LEC IXC affiliates to provide unique competitive challenges for national carriers.<sup>5</sup> Between March and July of this year, AT&T customers who "outPIC'd" to Alltel totaled over 25% of the residential customers Alltel serves in that state. Similar to SNET, Alltel's success is focused on the fact that only it can practicably provide a full range of local, intraLATA toll and interLATA services to its "home town" customers.

From a rate averaging perspective, national and regional carriers are in substantially different positions. Rate averaging requires national carriers to view all of

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(footnote continued from previous page)

Complaint (¶ 7) that nearly 96% of the areas in Connecticut are urban.

<sup>4</sup> See Implementation of Local Competition Provisions in the Telecommunications Act of 1996, FCC 96-325, released August 8, 1996, ¶ 3.

<sup>5</sup> Although Alltel operates in many states, it has not yet launched substantial IXC services elsewhere. Georgia, however, represents about one-third of Alltel's total customers.

their pricing decisions from a nationwide perspective, because the Commission's rule requires them (in most cases) to make their rates available to all customers across the country and to reflect in those rates the enormous range of access charges imposed by hundreds of LECs. Regional carriers, in contrast, face no "rate averaging" constraints under the Commission's rules. Rather, they may set rates that are based solely upon the market needs of their specific areas and that need only reflect a single LEC's access rates, often the rates of their own affiliate. Moreover, the regional IXCs' local affiliates recover access charges that are still laden with extraordinary subsidies. The existence of these non-cost based rates enables the regional carriers' parent companies to profit handsomely from their subsidiaries' combined operations, even if the IXC affiliate offers discounted long distance rates. National competitors, in contrast, must treat all of their access charge payments as costs.

Thus, specific evidence concerning the activities of regional IXCs not only shows that forbearance of the rate averaging rules is appropriate in these circumstances, they also demonstrate that nationwide IXCs must be able to offer regionally specific rates and optional calling plans -- and not just promotions -- when they face regional competition, especially from IXC affiliates of incumbent LECs. Failure

to provide flexibility to national carriers affirmatively harms competition in the affected areas, because such carriers are precluded from competing on the basis of the conditions that are unique to those specific areas.

On the other hand, granting national carriers the flexibility to offer geographically-specific rates in those areas would not harm existing competition -- or consumers -- anywhere else. Even if national carriers are permitted to offer geographically specific rates in areas where they face unique competition from regional carriers, they would still have to charge their general rate-averaged rates in all other areas. Thus, the forbearance exception AT&T seeks here would only lead to lower, not higher, aggregate rates, because the relief requested would only permit national carriers to provide geographically specific rates that are lower than their nationwide rates.<sup>6</sup>

Accordingly, there is no doubt that the Section 10 forbearance test is met in these circumstances. First, enforcement of the general rate averaging rule is

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<sup>6</sup> There is also no reason to believe that customers in the non-contiguous states would suffer as a result of such a rule. National carriers serving Hawaii, Alaska and other outlying points typically face competitors that specialize in providing services from such states (e.g., GTE/Hawtel in Hawaii and GCI in Alaska). Allowing national carriers to offer lower prices that respond to the competitive conditions in those states would only foster, and never impede, competition.

unnecessary to assure that national carriers' rates, charges and practices are just and reasonable and not unjustly or unreasonably discriminatory. National carriers that compete against the offers of regional carriers face a unique type of competition that merits unique market responses. Thus, there is no danger that geographically-specific rates of nondominant national IXC's would be unjustly or unreasonably discriminatory.<sup>7</sup> National carriers in such situations are only seeking flexibility to counter the special advantages of carriers who do not operate under the same nationwide market conditions.

Second, freeing national carriers to compete on price with regional carriers affirmatively protects consumers by assuring the widest range of competition from the broadest array of carriers. In contrast, consumers are harmed when the largest IXC's are shackled from competing openly and fairly against regional competitors. Indeed, failure to forbear in these cases only permits regional competitors to benefit from a price umbrella that is imposed by a strict and inflexible application of a rate averaging rule.

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<sup>7</sup> Because such rates would overall be lower than the generally averaged rates, the geographically specific rates would, by definition, be just and reasonable, as long as they are above the carrier's relevant costs.

Third, application of the Commission's forbearance authority and elimination of anticompetitive regulatory price umbrellas is clearly consistent with the public interest. Accordingly, the Commission should reconsider its prior decision and forbear from applying its general rate averaging rule when national carriers must compete with large and well-financed regional IXCs such as SNET, GTE, Alltel and other large regional carriers.

II. The Commission Should Permit Geographically Specific Promotions Consistent with its Prior Policies, as the 1996 Act's Legislative History Contemplates.

The Order (¶ 29) acknowledges that, prior to the 1996 Act, AT&T and other carriers were routinely permitted to offer geographically targeted promotional discounts for periods of up to 24 months. The Order (¶ 21) also recognizes that "the legislative history of Section 254(g) states that Congress intended that section to 'incorporate' [the Commission's] existing policy concerning rate averaging."<sup>8</sup> Nevertheless, the Order (¶ 30) only permits carriers to offer geographically targeted promotional discounts for periods of 90 days or less. Thus, the Commission's rule implementing Section 254(g) is neither

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<sup>8</sup> See AT&T Comments, p. 31.

mandated by the statute nor consistent with its own prior procompetitive policies.

Moreover, as shown in Part I above, enforcement of the rule as adopted will place national carriers at a substantial disadvantage compared to regional carriers, particularly IXCs that are affiliated with dominant local exchange carriers. Therefore, the Commission should reconsider its rules on "temporary" promotions and permit carriers to continue their prior practice of offering geographically targeted promotions for periods of up to 24 months. Reconsideration of the reduction in the promotional period is particularly important if the Commission does not adopt the more flexible approach identified in Part I above.

The forbearance standard described above is equally applicable to promotions. National carriers seek to offer geographically specific promotions to meet the specific competitive circumstances in particular areas. Such promotions are most necessary as a tool to compete against carriers such as SNET and other IXCs that do not need to focus on rate averaging concerns at all. Moreover, SNET's response to AT&T's efforts to use "garden variety" promotions to compete against SNET's substantial and unique advantages in Connecticut shows that regional carriers will only use the Commission's rate averaging rule to reduce, not maximize, the competition available to customers in their

areas. Accordingly, the Commission should reconsider its rule on promotions and reinstate the 24-month limit that had previously been standard in the industry.

The Order (n.65) itself recognizes that national carriers may have legitimate needs to introduce geographically specific promotions of longer than 90 days, and it states that carriers wishing to offer such promotions may seek a waiver under Section 1.3 of the Commission's rules. The waiver process, however, is too cumbersome to support the needs of an effectively competitive market. Not only do waiver proceedings typically take substantial time, they may also require national carriers to reveal their specific marketing plans to their regional competitors long in advance of the time when the longer-term promotions could be offered to consumers. The Commission has long recognized the chilling effect of such delays, especially when they are imposed on non-dominant carriers. Thus, any waiver process would be insufficient to meet consumers' need for full and effective competition, unless it permits national carriers to place promotional offers into the market as quickly and efficiently as their other services.

#### CONCLUSION

The Commission should reconsider its refusal to permit national carriers to offer geographically-specific

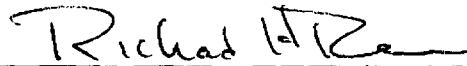
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rates when they face competition from regional carriers. In such cases, national carriers should be able to offer customers in the affected areas permanent rate plans, including optional calling plans, that are suited to the unique competitive needs of the specific area. In addition, the Commission should reconsider its rules regarding promotions and restore its prior limit of 24 months for geographically-specific promotions.

Respectfully submitted,

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September 16, 1996

CERTIFICATE OF SERVICE

I, Diane Danyo, do hereby certify that a true copy of the foregoing Petition for Reconsideration of AT&T Corp. was served this 16th day of September, 1996, by United States mail, first class, postage prepaid, upon the parties listed on the attached Service List.

A handwritten signature in cursive script, reading "Diane Danyo". The signature is written in black ink and is positioned above a horizontal line.

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